IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**APPEAL NO. 843 OF 2001**

**IN**

**NOTICE OF MOTION NO. 2935 OF 1998**

**IN**

**SUMMAY SUIT NO. 4114 OF 1998**

Zensar Technologies Ltd. ... Appellants

Versus

Zenith Computers Ltd. ... Respondents.

Mr. P.D.Ghandy with Mr.R.J. Majra, instructed by M/s. Wadia Ghandy & Co., for the appellants.

Mr. M.U. Pandey for the respondents.

**CORAM**: **KSHITIJ R. VYAS, C.J.** &
**ABHAY S. OKA, J.**

**DATE:** JUNE 12, 2006.

**P.C.**

Admit. With the consent of the learned counsel appearing for the parties, appeal is taken up forthwith for hearing and final disposal.

2. This appeal is directed against an order of the learned single Judge dated August 23, 2001 whereby the learned single Judge has held that the suit was not filed within the stipulated period of two weeks as provided in the order dated 25th March, 1998 . By the said order dated 25th March, 1998, the Company Judge directed the Respondent to deposit an amount of Rs. 6 lakhs with the Prothonotary and Senior Master.

3. In our opinion, this appeal is required to be allowed on the short ground viz. that the learned single Judge has totally misread the order dated 25th March, 1998 passed by the learned Company Judge. On close scrutiny of the said order it clearly appears that on failure to file the suit after two weeks, the present appellant will not lose the right to withdraw the amount. The reason given by the learned single Judge is that since the suit is not filed within two weeks or within the extended period, the present appellant has lost right to withdraw the amount. As stated above, the order dated 25th March, 1998 does not contemplate any such condition.

4. In view of the above, the Appeal is allowed. The Appellants

are at liberty to withdraw the amount of Rs. 6 lakhs deposited by the Respondents with the accrued interest on furnishing Bank Guarantee of a Nationalised Bank to the satisfaction of the Prothonotary and Senior Master.

**CHIEF JUSTICE**

**ABHAY S. OKA, J.**